



Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2014–0020; 50120–1112–0000]

Availability of a Revised Environmental Assessment and Incidental Take Plan for the Maine Department of Inland Fisheries and Wildlife’s Trapping Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: On November 9, 2011, we, the U.S. Fish and Wildlife Service (Service), published a notice of availability of a draft environmental assessment (DEA) and receipt of an application for an incidental take permit (permit) pursuant to the Endangered Species Act of 1973, as amended (ESA), submitted by the Maine Department of Inland Fisheries and Wildlife (MDIFW), for the Maine Trapping Program Incidental Take Plan (ITP). MDIFW is requesting a permit under the ESA to authorize take of the federally threatened Canada lynx incidental to otherwise lawful activities associated with MDIFW’s statewide furbearer trapping program. The permit would be in effect for 15 years.

During the 60-day comment period, the Service received numerous comments on the DEA and the ITP. MDIFW revised the draft ITP to address public and Service comments and submitted a revised ITP to the Service in July 2013. The Service then revised its DEA. This notice announces the availability for a 30-day supplemental public comment period of both the revised DEA and the revised ITP for MDIFW's incidental take permit application.

DATES: To ensure consideration, we must receive your written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: Written comments may be submitted electronically via the Federal eRulemaking Portal: <http://www.regulations.gov>, or in hard copy, via U.S. mail, to: Public Comments Processing, Attn: **FWS-R5-ES-2014-0020**; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT: Laury Zicari, by U.S. mail at the U.S. Fish and Wildlife Service, Maine Field Office, 17 Godfrey Drive, Suite #2, Orono, ME 04473; or by phone at 207-866-3344.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2011 (76 FR 69758), the Service published a notice of availability of a draft environmental assessment (DEA) and receipt of an application for an incidental take permit (permit), pursuant to section 10(a)(1)(B) of the ESA (16 U.S.C. 1531 *et seq.*), for the Maine Trapping Program Incidental Take Plan (ITP). The Maine Department of Inland Fisheries and Wildlife (MDIFW) is requesting a permit under the ESA to authorize take of the federally threatened Canada lynx (*Lynx canadensis*) incidental to otherwise lawful activities associated with MDIFW's statewide furbearer trapping programs (i.e., fur trapping, animal damage, and predator management control). The permit would be in effect for 15 years.

During the 60-day comment period, which ran through January 9, 2012, the Service received numerous comments on the DEA and the draft ITP. The MDIFW revised the draft ITP to address public and Service comments and submitted a revised ITP to the Service on July 29, 2013. The Service then revised its DEA. This notice announces the availability for a 30-day supplemental public comment period of the both the revised DEA and the revised ITP for MDIFW's incidental take permit application.

How Incidental Take Permits Work

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct" (16 U.S.C. 1538). However, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize

incidental take of listed species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity.

Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations (50 CFR 17.22 and 17.32).

If an incidental take permit is granted to MDIFW, the State and licensed trappers conducting otherwise legal trapping activities would be authorized to incidentally take Canada lynx according to limitations prescribed in the revised ITP, along with any additional conditions the Service determines are necessary and appropriate for issuance of an incidental take permit.

Applicant’s Revised Incidental Take Permit Application

On July 29, 2013, the Service received a revised ITP from MDIFW that incorporates changes responding to comments from the public and the Service. The revised ITP includes important changes and clarifications from MDIFW’s previous draft ITP, which was submitted to the Service in 2008 and released for comment in 2011 (76 FR 69758). Under the covered activities of the revised ITP, MDIFW includes predator management and animal damage control programs, in addition to recreational fur trapping. Several new methods of trapping and new trapping regulations would be implemented, including lifting the size restrictions on foothold traps. Measures to avoid and minimize take have been updated to include increased veterinary oversight, protocols for responding to orphan kittens, increased trapper outreach, and increased compliance monitoring. Further, the revised ITP incorporates additional contingencies to address a number of potential changed circumstances. The requested incidental take over the

15-year duration of the permit is increased to 195 incidentally trapped lynx, of which 9 may experience major injury and 3 may die. The other incidentally trapped lynx would be released with no or minor injuries. Finally, MDIFW has clarified the mitigation strategy and seeks to address the impact of lynx mortalities. Mitigation consists of maintaining and enhancing at least 4,785 acres of lynx habitat on a 10,411-acre area on the Maine Division of Parks and Public Lands Seboomook Unit in northern Maine.

Service's Revised Draft Environmental Assessment

The Service has revised its DEA to reflect MDIFW's revised ITP. The changes to the DEA include: (1) A revised purpose and need for a permit; (2) new alternatives to the proposed action; (3) a description of the aspects of the human environment that would be affected by MDIFW's trapping programs; and (4) an evaluation of the environmental consequences of the proposed project and the mitigation measures.

The DEA considers four alternatives:

(1) Status quo: No action, no incidental take permit is issued, and trapping continues in its current form consistent with the requirements of the 2007 Consent Decree. The Consent Decree is a settlement agreement stemming from an earlier lawsuit, *Animal Protection Institute v. Roland D. Martin*, which imposes a number of restrictions on trapping activities in lynx wildlife management districts. Fur trapping, predator management, and animal damage control continue statewide in this alternative.

(2) No action: No incidental take permit is issued, and, to avoid take of lynx, MDIFW discontinues all trapping programs in lynx wildlife management districts.

(3) Proposed action: An incidental take permit is issued to MDIFW, and measures in the 2013 revised ITP are implemented.

(4) An incidental take permit is issued to MDIFW for statewide fur trapping, but the predator management and animal damage control programs in lynx wildlife management districts are discontinued. Fur trapping measures in the 2013 revised ITP are implemented.

For alternatives 2 to 4, we presume that the described programs would replace the requirements of the 2007 Consent Decree, which would ultimately be rescinded. A number of issues that were raised during the initial public comment period on the DEA are still relevant to the revised proposed action. Therefore, the Service's DEA also has included a response to comments to explain how those issues are handled in MDIFW's revised ITP and the Service's revised DEA.

Next Steps

We will evaluate the revised ITP and comments we receive on the Service's revised DEA to determine whether the permit application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue a permit. If the requirements are met, we will issue the permit to the applicant.

Authority

This notice is provided pursuant to section 10(c) of the ESA and the National Environmental Policy Act regulations (40 CFR 1506.6).

Dated: July 22, 2014.

**Paul R. Phifer,
Assistant Regional Director,
Ecological Services.**

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